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No. 00-1089

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

On Writ Of Certiorari to the United States Court Of Appeals for the Sixth Circuit

AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT PLAINTIFF'S EVIDENCE WAS SUFFICIENT FOR A JURY TO FIND SHE WAS DISABLED FROM A BROAD RANGE OR CLASS OF JOBS 4

II. THE DISTRICT COURT ERRED IN ENTERING SUMMARY JUDGMENT FOR DEFENDANT ON THE ISSUE OF WHETHER PLAINTIFF WAS DISABLED UNDER THE AMERICANS WITH DISABILITIES ACT. 7

A. The District Court Erred in Entering Summary Judgment Based on Apparent Inconsistency Between Plaintiff's Testimony and Medical Reports. 9

B. The District Court Erred in Failing to Draw Reasonable Inferences from the Medical Evidence Most Favorably To Plaintiff. 10

C. The District Court Erred in Basing Summary Judgment on the Failure of Plaintiff's Vocational Expert to Include Evidence of Job Availability in Plaintiff's Geographical Area. 11

D. The District Court Erred in Basing Summary Judgment on the Credibility of Testimony by Plaintiff's Vocational Expert. 13

III. THIS COURT SHOULD REJECT PETITIONER'S INVITATION TO LIMIT THE ADA TO A "DISCRETE AND INSULAR MINORITY" WHO ARE "TRULY DISABLED." 14

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 565 (1999).9, 14

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). 9

Bragdon v. Abbott, 524 U.S. 624 (1998) 7, 15

Cleveland v. Policy Management Sys. Corp., 119 S. Ct. 1597 (1999).....10

DePaoli v. Abbott Laboratories, 140 F.3d 668 (7th Cir.1998) 6i

EEOC v. Rockwell Int'l Corp., 243 F.3d 1012 (7th Cir. 2001) 13

Kiphart v. Saturn Corp., 251 F.3d 573 (6th Cir. 2001) 7

Kirkingburg, supra.....15

Loven-Swinbank v. Modern Metal Products Co., 2000 WL - 28255 (N.D. Ill. 2000).....7

Murphy v. United Parcel Serv., Inc., 527 U.S. 516 (1999) ...5

Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097 (2000)..... 9

Sutton v. United Airlines, Inc., 527 U.S. 471 (1999).....5, 14

Taylor v. Phoenixville School Dist., 184 F.3d 296(3d Cir. 1999) 14

Statutes and Regulations

Americans with Disabilities Act, 42 U.S.C. § 12102(2)(A) ..... passim

29 C.F.R. § 1630.2(j)(3)(i) 5

29 C.F.R. § 1630.2(j)(3)(ii) 11

Other Authorities

American Bar Association, "Study Finds Employers Win Most ADA Title I Judicial and Administrative

Complaints," 22 Mental & Physical Disability L. Rep. 403 (1998)..... 8
Peter D. Blanck & Mollie W. Marti, *Attitudes, Behavior and the Employment Provisions of the Americans with Disabilities Act*, 42 Vill. L. Rev. 345 (1997).....15
Peter David Blanck, Communicating the Americans with Disabilities Act: Transcending Compliance--A Case Report of Sears Roebuck and Co. (Report, The Annenberg Washington Program, 1994). 15
Ruth Colker, The Americans with Disabilities Act: A Windfall for Defendants, 34 Harv. C.R.-C.L. Rev. 99 (1999).....8
Equal Employment Opportunity Commission, Compliance Manual § 902, Definition of the Term "Disability" (CCH 1995). 7
S. Rep. No. 116, 101st Cong., 1st Sess. (1989) 15

Jeffrey A. Van Detta and Dr. Dan R. Gallipeau, *Judges and Juries: Why Are So Many ADA Plaintiffs Losing Summary Judgment Motions, and Would They Fare Better Before a Jury? A Response to Professor Colker*, 19 Rev. Litig. 505 (2000).....8

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AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE PETITIONER

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Association of Trial Lawyers of America ("ATLA") respectfully submits this brief as amicus curiae in this case. Letters from Petitioner and Respondent granting consent to the filing of this *amicus curiae* brief have been filed with this Court.[1]

[1] Pursuant to Rule 37.6, Amicus discloses that no counsel for a party authored any part of this brief, nor did any person or entity other than Amicus Curiae, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

ATLA is a voluntary national bar association whose approximately 50,000 trial lawyer members primarily represent individual plaintiffs in civil actions, including workers seeking to vindicate their rights under federal civil rights statutes against employment discrimination.

ATLA's mission to preserve the constitutional right to trial by jury reflects its conviction that the most effective means for enforcing individual civil rights is to safeguard the individual's right to present his or her case to a jury – ordinary Americans entrusted with the responsibility to act as finder of fact and conscience of the community. ATLA is deeply concerned that improper use of summary judgment to take employment discrimination cases away from civil juries, will undermine the protections for workers Congress intended in the Americans with Disabilities Act and other civil rights legislation.

SUMMARY OF THE ARGUMENT

1. Petitioner mischaracterizes the decision of the Sixth Circuit Court of Appeals. The court did not hold that Ella Williams is disabled for purposes of Title 1 of the Americans with Disabilities Act merely because she is unable to perform a single particular job. Rather, the court ruled that she had presented sufficient evidence that her impairment prevented her from doing a substantial number of jobs that might otherwise be open to her based on her training and experience.

Obviously, her inability to perform a single particular job at Toyota's plant prompted Ms. Williams to request accommodation. However, Petitioner's own Statement of the Case indicates that Ms. William's impairment precluded her from working at nearly every assembly line job at the large facility. Toyota asserts that as long as she is capable of working

at one assembly-line job, Ms. Williams is not disabled. This assertion is all the more untenable because the single job Toyota identifies as one that Ms. Williams can perform is the very job she had performed satisfactorily and which Toyota made unavailable to her.

Manual assembly line work is not a single job, but constitutes a class of jobs. Respondent's evidence demonstrated that her impairment prevented her from performing a substantial number of such jobs. The court of appeals correctly ruled that this evidence was sufficient for a jury to find that Ms. Williams was disabled under the ADA.

2. The primary issue before this Court is whether the district court improperly took the issue of Ms. Williams' disability away from the jury by entering summary judgment for Toyota. Recent empirical studies reveal that plaintiffs in civil actions under the ADA lose over 93% of cases at the district court level, raising concerns that the rights Congress put in place are not effectively enforced. Research also suggests that improper use of summary judgment to keep the factual question of whether a plaintiff is disabled is a major factor.

This Court has recently reemphasized that a federal court deciding a motion for summary judgment must examine the evidence in the light most favorable to the non-movant, drawing all inferences in favor of the non-movant and leaving for the jury to assess the weight and credibility of the evidence. The district court in this case violated those limits.

The district court erred disregarding crucial medical evidence proffered by plaintiff on the ground that, in the court's view, statements in the medical report were in conflict with plaintiff's own statements. Resolving such inconsistencies is a matter for the jury.

The district court erred in disregarding plaintiff's medical reports on the ground that the medical experts did not

specify the permanence and long-term impact of her condition. As the court of appeals stated, these were easily inferred from the medical restrictions placed on Ms. Williams by her doctors.

The district court erred in disregarding testimony by plaintiff's vocational expert concerning the availability of jobs accessible to plaintiff. The fact that the expert did not tailor his report to plaintiff's local geographical area was a factor to be considered by the jury, not an essential element of proof.

The district court erred in disregarding the report by plaintiff's vocational expert on the ground that the expert relied on medical reports dated after the alleged refusal of accommodation. Whether the lapse of time would have affected the expert's conclusions affected the weight of the evidence.

3. Toyota urges this Court to limit the protections of the ADA to those who are members of a "discrete and insular minority" who are "truly disabled." This cynical argument attempts to pit categories of claimants against each other in a competition for resources and offends the objective of the ADA to remove stereotypes and categories of the disabled. Toyota ignores research that demonstrates that employers who accommodate disabled persons experience cost savings that outweigh the initial expenditures. Congress made the policy decision to require employers to make reasonable accommodations to reduce the economic waste that resulted from consigning the disabled to nonproductivity and dependence. Petitioner has come to the wrong branch of government in its effort to reverse that course.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT PLAINTIFF'S EVIDENCE WAS SUFFICIENT FOR A JURY TO FIND SHE WAS DISABLED FROM A BROAD RANGE OR CLASS OF JOBS

Toyota is somewhat disingenuous in its insistence that the Sixth Circuit below ruled that plaintiff was disabled "based solely on the inability to perform the manual tasks associated with a single, particular job." Pet. Br. at 4. Toyota makes this characterization the major premise of its Question Presented and its Argument to this Court.

This Court has already held that under the Americans with Disabilities Act "to be regarded as substantially limited in the major life activity of working, one must be regarded as precluded from more than a particular job." *Murphy v. United Parcel Serv., Inc., 527 U.S. 516, 523 (1999).* Rather, the claimant must show that his or her impairment precludes working at "a substantial class of jobs" or "a broad range of jobs" utilizing the individual's skills. *Sutton v. United Airlines, Inc.,* 527 U.S. 471, 492-93 (1999). The Court's language reflects the EEOC's regulations. *See* 29 C.F.R. § 1630.2(j)(3)(i) (an individual is "substantially limited" from working if she is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.")

The court of appeals' decision in this case is not to the contrary. The court found that Ms. Williams' physical impairments -- her inability to grip tools, frequently lift more than ten pounds, or repetitively use her arms and hands above shoulder height – prevented her from working at manual assembly line jobs, as well as manual product handling jobs and manual building trade jobs. Pet. at 4a. Ms. Williams' impairment did not simply prevent her from doing a particular job, but precluded her from working at a substantial class of jobs utilizing her skills and experience. Toyota's own Statement of the Case demonstrates that her limitation was substantial.

In 1990, Ms Williams began working in Toyota's Georgetown, Ky. plant , which employs over 7,500 workers, many of whom work on assembly lines. She worked in the paint department and on the assembly line using pneumatic tools, until she developed carpel tunnel syndrome in her wrists and tendinitis in her neck and arms. Pet. Br. at 4.

Toyota asserts that it attempted to accommodate Ms Williams by assigning her various modified duty jobs, with little success. Finally, she was assigned to Quality Control Inspection Operations, which Toyota characterizes as having the "easiest jobs" in the plant. Pet. Br. at 5. She worked in that unit for about three years, rotating between Paint Inspection and Assembly Paint, the two least taxing of the unit's workstations. It is undisputed that her performance was satisfactory. *Id.* Toyota then rotated Ms Williams to another workstation in QCIO, which required gripping of tools and repetitive movement of her upper extremities. She trained and attempted to carry out these new duties for several weeks, until the pain in her arms, hands, shoulders and neck rendered her unable to continue. Pet. Br. at 6. At that point, Ms Williams asked to return to her previous position. *Id.*

It is true that her inability to perform the tasks of her new position prompted Ms. Williams to seek a reasonable accommodation from Toyota. It is also true – and a fair reading of Toyota's Statement of the Case bears this out—that her impairment was so severe that it precluded her from every other job at the Toyota plant that she might otherwise have performed. Toyota has suggested only one assembly line job she could perform -- the very paint inspection job that it made unavailable to her.

The assembly line is a mainstay of American manufacturing, used in a wide variety of industries. Assembly line work is recognized as not a single job, but a class of jobs that vary greatly in their demands on workers. *DePaoli v. Abbott Laboratories,* 140 F.3d 668, 673 (7th Cir.1998); *Kiphart v. Saturn Corp.*, 251 F.3d 573, 584 (6th Cir. 2001); *Loven-Swinbank v. Modern Metal Products Co.*, 2000 WL 28255 at *6 (N.D. Ill. 2000) ("Assembly line work is a recognized type of work in manufacturing plants and may constitute a class of jobs.").

Ms. Williams offered expert testimony that her impairments rendered her unable to perform a substantial number of those jobs. Toyota's argument instead focuses on whether there exists any assembly line job she *can* do. Pet. Br. at 7. This is a far narrower interpretation than the ADA's definition of disability. *See Bragdon v. Abbott,* 524 U.S. 624 (1998) ("The Act addresses substantial limitations on major life activities, not utter inabilities.").[2]

II. THE DISTRICT COURT ERRED IN ENTERING SUMMARY JUDGMENT FOR DEFENDANT ON THE ISSUE OF WHETHER PLAINTIFF WAS DISABLED UNDER THE AMERICANS WITH DISABILITIES ACT.

ATLA submits that the central question before this Court is not whether Ella Williams is disabled under the Americans with Disabilities Act. Rather it is whether the

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2 EEOC regulations do not provide a precise definition of a "class" of jobs. However, the Commission' Compliance Manual offers an example. A computer programmer who develops a vision impairment that prevents her from distinguishing characters on computer screens is disabled "because her impairment prevents her from working in the class of jobs requiring use of a computer." By contrast, if her vision impairment only prevented her from distinguishing characters on her employer's peculiar type of computer screens, she is not substantially limited in working if she remains able to perform similar jobs for other employers. Equal Employment Opportunity Commission, Compliance Manual § 902, Definition of the Term "Disability" (CCH 1995). In this case, Ms. Williams' impairment was not limited to the sponge tool Toyota required her to use; she was limited in her ability to grasp tools of any kind.

district court, as the Sixth Circuit found, improperly took this question away from the jury.

Contrary to the hopes of many of the ADA's supporters, civil actions to enforce the right to reasonable accommodations in employment have not proven wholly effective. The number of lawsuits has been relatively small. More significantly, recent empirical studies reveal that defendants prevail in about 93% of cases decided at the trial level. Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants,* 34 Harv. C.R.-C.L. Rev. 99, 100 (1999); American Bar Association, "Study Finds Employers Win Most ADA Title I Judicial and Administrative Complaints," 22 Mental & Physical Disability L. Rep. 403, 404 (1998) (reporting results of study by the ABA Commission on Mental and Physical Disability Law). Only prisoner lawsuits fare as poorly for plaintiffs. Coker, *supra* at 100.

A major factor in the high rate of claimants' losses under the ADA, according to one researcher, is "abuse of the summary judgment device." Colker, *supra* at 101. In particular, "district courts are refusing to send 'normative' factual questions to the jury, such as issues of whether an individual has a 'disability.'" *Id.*[3]

To ensure full judicial enforcement of the rights Congress conferred in the ADA, as well as to preserve the right to trial by jury guaranteed in the Seventh Amendment, this Court should carefully scrutinize the use of summary judgment in cases such as this one.

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3 Another scholar does not disagree with the role played by improper summary judgments, but adds that trial lawyers who do not adequately prepare ADA cases must share some of the blame for this high failure rate. Jeffrey A. Van Detta and Dr. Dan R. Gallipeau, *Judges and Juries: Why Are So Many ADA Plaintiffs Losing Summary Judgment Motions, and Would They Fare Better Before a Jury? A Response to Professor Colker,* 19 Rev. Litig. 505 (2000).

The factual question in this case is clearly defined. The ADA prohibits job discrimination against a qualified person with a disability, which Congress has defined as "a physical or mental impairment that substantially limits one or more of the major life activities" of that individual." 42 U.S.C. § 12102(2)(A). It is undisputed that Ms. Williams suffered an impairment during the relevant time. Pet. at 34a. It is also agreed that performing manual tasks and working are major life activities. *See* 29 C.F.R. § 1630.2(i). At issue is whether the limitations for Williams on these major life activities is "in fact substantial." *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 565 (1999).

> Credibility determinations, the weighing of the evidence, and the drawing of inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

This Court recently had occasion to reemphasize those principles in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097, 2110 (2000), reversing summary judgment in an employment discrimination case where the court failed to draw all reasonable inferences in favor of the plaintiff, disregarded critical evidence in plaintiff's case, and "impermissibly substituted its judgment concerning the weight of the evidence for the jury's." *Id.* at 2111. The district court in this erred in similar fashion.

A. The District Court Erred in Entering Summary Judgment Based on Apparent Inconsistency Between Plaintiff's Testimony and Medical Reports.

Williams presented evidence that she was restricted by both Toyota's doctors and her personal physician from performing manual tasks that require repetitive movement of

her upper extremities or any work that must be performed above her chest level. She was also precluded from any manual task that requires rotary or lateral movements of her head and neck. Pet. at 36a

The district court acknowledged that this medical evidence tended to show that Plaintiff was unable to perform manual tasks. However, the court found this evidence "irretrievably contradicted by Plaintiff's continual insistence that she could perform the tasks in assembly and paint inspection without difficulty; positions requiring manual tasks." Pet. at 36a

Whether any apparent inconsistencies between Ms. Williams' testimony and the doctors' reports undermined the weight or credibility of plaintiff's evidence was a matter for the jury to decide. Certainly, Ms. Williams was entitled to explain to the jury how she could be able to perform one particular job, though she was unable to perform a substantial number of assembly line jobs. *Cf. Cleveland v. Policy Management Sys. Corp.*, 119 S. Ct. 1597, 1604 (1999) (ADA plaintiff was entitled to explain to the jury inconsistencies in pleadings regarding the extent of her claimed disability).

B. The District Court Erred in Failing to Draw Reasonable Inferences from the Medical Evidence Most Favorably To Plaintiff.

Williams presented medical evidence that she is limited in her ability to perform manual tasks, both job-related and in her personal life. As noted above, she presented evidence that she was restricted by both Toyota's doctors and her personal physician from performing manual tasks that require repetitive movement of her upper extremities or any work that must be performed above her chest level. She is also precluded from any manual task that

requires rotary or lateral movements of her head and neck. Pet. at 36a

The district court ruled, however, that Williams "failed to present any evidence regarding the nature and severity of Plaintiff's impairment, the duration or expected duration of her impairment or the permanent or long term impact resulting from the impairment. *See id.*, 1630.2(j)(2). Absent such evidence, no rational juror could conclude that Williams is substantially limited in her ability to perform manual tasks." Pet. at 36a.

As the court of appeals correctly pointed out, "looking at all of the evidence most favorably to the plaintiff, the duration of Williams' impairment, as well as the expected permanent impact of it, are inferable from the permanent work restrictions prescribed by Williams's treating physicians." Pet. at 4a-5a. The district court erred in failing to draw this inference.[4]

C. The District Court Erred in Basing Summary Judgment on the Failure of Plaintiff's Vocational Expert to Include Evidence of Job Availability in Plaintiff's Geographical Area.

Plaintiff offered the testimony of Dr. Weikel, a vocational expert from Morehead, Kentucky, whose report stated that plaintiff's condition reduced the number of jobs in the economy she could perform by 50-55%. Pet. at 38a.

The district court, relying on EEOC regulations set forth at 29 C.F.R. § 1630.2(j)(3)(ii),[5] ruled it essential that

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4 As the district court itself determined, by the time of her termination in Jan. 1997, Ms. Williams' condition had worsened to the point that she was permanently unable to perform work of any kind. Pet. at 48a. The severity, duration, and long-term impact of Ms Williams' impairment were tragically obvious.

5 (3) With respect to the major life activity of working--

such evidence establish "a claimant's ability, or inability, to access the job market *in her own geographical area*." Pet. at 40a (emphasis in original). Because Dr. Weikel's report did not indicate the number and types of jobs unavailable to Ms. Williams in her own geographical area, the court concluded that she could not show she was substantially limited in the activity of working. Pet. at 40a.

The EEOC regulations themselves explicitly state that the enumerated factors with respect to plaintiff's geographical area "may be considered in determining whether an individual is substantially limited in the major life activity of 'working'."

The interpretative guidance offered by the EEOC further states that the enumerated factors,

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(i) The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

29 C.F.R. § 1630.2(j)(3)(ii)

are not intended to require an onerous evidentiary showing. Rather, the terms only require the presentation of evidence of general employment demographics and/or of recognized occupational classifications that indicate the approximate number of jobs (e.g. 'few,' 'many,' 'most') from which an individual would be excluded because of an impairment.

29 C.F.R. Pt. 1630, App. § 1630.2(j).

Whether conditions in the local job market would have undermined the expert's conclusions was a matter to be presented to the jury. *See EEOC v. Rockwell Int'l Corp.*, 243 F.3d 1012, 1017 (7th Cir. 2001) (declining "to create a per se rule that a plaintiff cannot prevail without quantitative evidence of the precise characteristics of the local job market).

D. The District Court Erred in Basing Summary Judgment on the Credibility of Testimony by Plaintiff's Vocational Expert.

Additionally, the district court deemed Dr. Weikel's report "insufficient" because two of the medical records he relied on were dated Feb. 19 and July 15, 1997, some months after Toyota's alleged refusal of reasonable accommodation in Fall, 1996. Pet. at 39a.

A requirement that the vocational expert rely only on medical records dated on or near the exact date of the alleged discrimination is unreasonably narrow and rigid. Whether the plaintiff's condition changed during that period of time and whether that change would have altered Dr. Weikel's opinion as to whether a substantial number of jobs was unavailable to her were matters easily explored on cross-examination. The weight to be accorded to Dr. Weikel's testimony was a matter for the jury, not for the judge on motion for summary judgment. *See, e.g. Taylor v. Phoenixville School Dist.*, 184 F.3d 296, 309 (3d Cir. 1999) (matter for jury to determine

(matter for jury to determine whether medical report reflected claimant's condition on a later date).

III. THIS COURT SHOULD REJECT PETITIONER'S INVITATION TO LIMIT THE ADA TO A "DISCRETE AND INSULAR MINORITY" WHO ARE "TRULY DISABLED."

Toyota expends considerable effort urging this Court to shrink the number of Americans covered by the ADA even beyond the statutory definition of "disabled." It rejects the notion that "to be faithful to the remedial purpose of the Act, we should give it a generous, rather than a miserly, construction." *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 495 (1999) (Stevens, J., dissenting). Instead, Toyota would deny the Act's protections to workers suffering an impairment who cannot also demonstrate that they have been "isolated and segregated" into a "politically powerless," "discrete and insular minority." Pet. Br. at 23. To allow lesser claimants such as Ms. Williams to obtain reasonable accommodation, Toyota argues, would "siphon off the resources employers can devote to assisting the truly disabled." Pet. Br. at 30.

This cynical argument attempts to pit "workers suffering from lesser afflictions" against the "truly disabled" in a competition for resources. Such an approach does violence to the objective of the ADA, to eliminate treatment of the disabled based on stereotypes and categories of impairments, in favor of decisions based on each individual's limitations and qualifications. *See Sutton*, supra at 489; *Kirkingburg, supra* at 567 (the Act requires claimants to prove "the extent of the limitation in terms of their own experience."); 29 CFR pt. 1630, App. § 1630.2(j) ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on

the life of the individual"); *see also Bragdon v. Abbott*, 524 U.S. 624 (1998) (declining to consider whether HIV infection is a *per se* disability under the ADA).

Nor does Toyota offer a shred of support for its zero-sum theory of a race for resources. Studies of large employers such as studies by the Job Accommodation Network and self-studies by corporations such as Sears, Roebuck & Co., found that the average direct cost of workplace accommodations for various groups of disabled workers ranged between $45 and $500, but resulted in an average per-accommodated-employee savings of more than $5,000 in lower job training costs, rehabilitation expenses, and insurance claims combined with increased employee productivity. *See* Peter D. Blanck & Mollie W. Marti, *Attitudes, Behavior and the Employment Provisions of the Americans with Disabilities Act*, 42 Vill. L. Rev. 345, 375-78 (1997); Peter David Blanck, *Communicating the Americans with Disabilities Act: Transcending Compliance--A Case Report of Sears Roebuck and Co.* (Report, The Annenberg Washington Program, 1994).

Congress, of course, was not unaware of employers' fears concerning the costs of accommodating the disabled. However, Congress also found that failure to make reasonable accommodations "costs the United States billions of dollars in unnecessary expenses from dependency and nonproductivity" 42 U.S.C. § 12101(a)(9); see also S. Rep. No. 116, 101st Cong., 1st Sess. 16-17 (1989) ("The Committee also heard testimony and reviewed reports concluding that discrimination results in dependency on social welfare programs that cost the taxpayers unnecessary billions of dollars each year.").

Congress made an economic policy judgment that requiring employers to make reasonable accommodations for qualified persons with disabilities was a rational step toward reducing this irrational economic waste. Toyota clearly

disagrees with the wisdom of that policy. However, it has come to the wrong branch of government to rewrite the law.

CONCLUSION

For the above reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

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